



2015-051

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Fred McNab
Mayor, Town of Pinckard
Post Office Box 202
Pinckard, Alabama 36371

Municipalities – City Council Members –
Conflicts of Interest – Contracts – Dale
County

Because the Town of Pinckard (“Town”) is a Class 8 municipality, section 11-43-12.1 of the Code of Alabama permits the Town to do business with a shop owned by a municipal officer when that shop or vendor is the only domiciled vendor within the municipality and the cost of the personal property or service offered by the vendor does not exceed \$3000 yearly. If the vendor is not the only one of its kind domiciled within the Town limits, or the service will exceed \$3,000 yearly, the elected official or municipal employee may bid on providing service to the Town pursuant to section 11-43-12.1(b) and in accordance with section 41-16-50 of the Code.

Dear Mayor McNab:

This opinion of the Attorney General is issued in response to your request on behalf of the Town of Pinckard.

QUESTION

May the Town of Pinckard continue to do business with a local repair and parts shop, where a council member has recently become the established owner, if the council member abstains from voting on purchasing from the shop?

FACTS AND ANALYSIS

In your request, you state that the Town of Pinckard has regularly done business with a repair and auto shop located inside the Town's limits. You further state that this shop was previously owned by a council member's grandparents, but now is owned by the council member. You would like to know if the Town may continue doing business with the shop if the council member abstains from voting on purchases from the shop.

Generally, pursuant to section 11-43-12 of the Code, municipal officers and employees are prohibited from being directly or indirectly interested in a contract, work, or business, the price or cost of which is paid from the treasury. See opinion to Honorable Rodney Christian, Mayor, Town of Odenville, dated April 21, 2005, A.G. No. 2005-118, *citing* ALA. CODE § 11-43-12 (2008). Class 7 or 8 municipalities, however, are governed by section 11-43-12.1, which provides as follows:

(a) Notwithstanding any statute or law to the contrary, any municipality in Class 7 or 8 ***may legally purchase*** from any of the elected officials of such municipality or employees of such municipality or board members of municipal boards organized under statutory authority by or for such municipality, any personal service or personal property, ***provided*** the elected official, employee, or board member is the ***only domiciled vendor*** of the personal service or personal property within the municipality, and such elected official, employee, or board member may legally sell such personal service or personal property to the municipality. The ***cost or value*** of such personal service or personal property authorized to be obtained or purchased under this section ***shall in no event exceed the sum of \$3,000.00***. The elected official, employee, or board member, if he proposes to sell to the municipality, ***shall not participate in the decision-making*** process determining the purchase of such personal service or personal property but shall make any disclosure required by the provisions of the code of ethics for public officials, found in Chapter 25 of Title 36. The governing body of such municipality shall determine and find that the elected official, employee, or board member, from whom the purchase is to be made, is the sole vendor domiciled in the municipality

and that the selling price of such service or property is lower than could be obtained from a vendor domiciled outside the municipality, and, in making such determination, consideration may be given to the quality of service or property proposed to be supplied, conformity with specifications, purposes for which required, terms of delivery, transportation charges, and the date of delivery.

ALA. CODE § 11-43-12.1(a) (2008) (emphasis added).

Thus, if the repair and parts shop is the only repair and parts shop domiciled inside the Town limits and the amount expended by the municipality is no more than \$3000 per year, the Town may continue to do business with the repair shop. See opinion to Honorable F. Mark Parnell, Attorney for the Town of Brookside, dated October 22, 1996, A.G. No. 97-00015 at 4 (noting that the \$3000 cap is to be calculated yearly). In such instances, the council member must, however, abstain from participating in the decision-making process. ALA. CODE § 11-43-12.1(a) (2008).

Here, the repair shop is located within the Town limits, but whether the shop is the only vendor of its kind or if the total amount in purchases exceeds \$3000 is unclear from the request. Thus, the Town must determine if section (a) is applicable. If not, the Town may look to section (b), which provides the following:

(b) Notwithstanding any statute or law to the contrary, any municipality in Class 7 or 8 **may legally purchase** from any of the elected officials, employee, or board member of such municipality any personal service or personal property **under the Competitive Bid Law procedures established by Article 3, Chapter 16, Title 41**, and such elected officials, employee, or board member may legally sell such personal service or personal property to such municipality under the procedures of said statutes. **The elected official, employee, or board member, if he proposes to bid, shall not participate in the decision-making process** determining the need for or the purchase of such personal service or personal property, or in the determination of the successful bidder, and **the governing body shall affirmatively find** that the elected official, employee, or board member, from whom the purchase is to be made, is **the lowest responsible bidder** as required by said statutes. It shall

be the duty and responsibility of the municipality to file a copy of any contract awarded to any of its elected officials, employees, or board members with the State Ethics Commission and all awards shall be a result of original bid takings.

It is the intention of the Legislature by the adoption of this section to specifically remove any statutory or legal prohibitions against municipalities, in Classes 7 and 8, dealing with their elected officials, employees, or board members in the purchase of personal services or personal property.

ALA. CODE § 11-43-12.1(b) (2008) (emphasis added).

Thus, if section (a) does not apply, the Town of Pinckard may still contract with the repair and parts shop by following the Competitive Bid Law procedures. In such instances, the procedures outlined in section 41-16-50, should be followed. ALA. CODE § 41-16-50 (2013). When competitive bidding is necessary, this Office has previously opined that if the business is the lowest responsible bidder, and if the council member does not participate in the decision-making process, the town may award the contract to the business owned by the council member. *See Christian* at 2-3; opinion to Honorable John D. Whetstone, Attorney, City of Gulf Shores, dated June 11, 2008, A.G. No. 2008-092; opinion to Honorable John Ben Jones, Attorney, City of Valley, dated January 31, 2013, A.G. No. 2013-028.

Finally, section 11-43-12.1(c) clarifies that the council member must fully disclose his or her relationship to the business:

(c) In the event an elected official, employee, or board member offers to sell or submit a bid to the municipality for the sale of personal property or a contract for furnishing personal services, the said official, employee, or board member shall make full disclosure of his ownership or extent of ownership in the business organization with which he is associated. In the event the business organization is a partnership, the names and addresses and percentage of ownership of the partners shall be disclosed and, in the event the business organization is a corporation, the names and addresses and percentage of ownership of all stockholders shall be disclosed. The disclosure required hereunder shall be made, under oath of the elected official, employee, or board member, in the original

submission to the municipality and in like manner in any contract or agreement entered into with the municipality.

ALA. CODE § 11-43-12.1(c) (2008).

Thus, under section 11-43-12.1, the Town of Pinckard may continue to do business with the repair and parts shop, if ownership is fully disclosed and either subsections (a) or (b) of section 11-43-12.1 apply.

You may also wish to present this question to the Alabama Ethics Commission.

CONCLUSION

Because the Town of Pinckard is a Class 8 municipality, section 11-43-12.1 permits the Town to do business with a shop owned by a municipal officer when that shop or vendor is the only domiciled vendor within the municipality and the cost of the personal property or service offered by the vendor does not exceed \$3000 yearly. If the vendor is not the only one of its kind domiciled within the Town limits, or the service will exceed \$3000 yearly, the elected official or municipal employee may bid on providing service to the Town pursuant to section 11-43-12.1(b) and in accordance with section 41-16-50 of the Code.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

LUTHER STRANGE
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

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